IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7630 OF 2006

Kanayalal Chetandas Jaisinghani ... Petitioner
(Ori. Deft. No.1)

Versus

1) Chuharlal Chetandas Jaisinghani ... Resp. No. 1
(Ori.Plaintiff)

2) MSEB i.e. M.S.E.D.C.L. ... Resp. No.2
(Ori.Deft.No.2)

Mr. K.C. Jaisinghani in person.

CORAM : A.P. DESHPANDE, J.
DATE : 8TH JANUARY 2007

P.C.

1) The Petitioner has challenged an order passed by the Trial Court below Exhibit 1291 dtd. 19th October 2006 rejecting the application moved by the Petitioner, taking objection to the direction issued by the Trial Court in regard to payment of the Commissioner's fees, so also seeking rejection of the petition raised under Order 7, Rule 11 of C.P.C. for rejection of the plaint.

2) It will not be out of place to point out that in the earlier round of litigation, the learned District Judge has passed an order directing the Petitioner to pay the Commissioner's fees for recording of evidence of the Petitioner/ defendant. The Trial Court has rightly held by the impugned order that the issue is already decided by

the learned District Judge in regard to payment of Commissioner's fees and hence the same cannot be agitated before the Trial Court.

3) It is also relevant to note that the evidence of the Plaintiff was recorded by appointing Commissioner and he has paid the Commissioner's fees for recording of his evidence, no fault can be found with the order passed by the Trial Court which is under challenge to the extent it directs payment of Commissioner's fees by the Petitioner/ defendant. Touching the other objection about the rejection of the plaint under Order 7, Sub Rule 11 of C.P.C. is concerned, it is enough to state that the suit has been filed in the year 1996 and the application has been moved after the evidence of the Plaintiff is over and the evidence of the defendant has commenced. The Trial Court has held that at this stage, it would not be appropriate to consider the application under Order 7, Sub Rule 11 of C.P.C.. It is obvious that as the evidence is being recorded, all submissions and objections can be considered at the stage of final hearing of the suit. No useful purpose would be served by directing the Trial Court to decide on the objections of the Petitioner under Order 7, Sub Rule 11 of C.P.C. The impugned order does not

suffer from any patent illegality or impropriety warranting interference in exercise of the writ jurisdiction. In the result, writ petition is summarily rejected.

(A.P. DESHPANDE, J.)